



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF	)	Docket No. <b>CWA-08-2004-0033</b>
	)	
Cenex Pipeline LLC	)	<b>CONSENT AGREEMENT</b>
803 Highway 212 South	)	
Laurel, Montana 59044	)	
	)	
Cenex Refined Products Pipeline Spill,	)	
Glendive, Montana	)	
	)	
Respondent.	)	

**AUTHORITY**

1. \_\_\_\_\_The United States Environmental Protection Agency Region 8 ("EPA") and Cenex Pipeline LLC ("Respondent"), by its undersigned representative, hereby consent and agree as follows.

2. EPA and the Respondent (collectively referred to as the "parties") have agreed to settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b), and to execute this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) to simultaneously commence and conclude the matter upon issuance of a final order.

3. EPA is authorized to issue civil administrative actions and assess civil penalties for violations of section 311(b)(3) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(3), pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act Amendments of 1990. The Administrator has properly delegated this authority to the undersigned EPA official.

4. This proceeding is governed by the Consolidated Rules of Practice Governing the  
Cenex Pipeline-Administrative Consent Agreement  
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Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

### **GENERAL ALLEGATIONS**

5. Respondent is a limited liability company organized and existing under the laws of the States of Minnesota and Montana as of 1998.
6. Respondent is a “person” within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
7. Respondent is an "owner and operator" within the meaning of section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
8. Respondent owns and/or operates the Cenex Refined Products Pipeline (the “pipeline”) for the purpose of transporting petroleum products including gasoline and diesel.
9. Petroleum is an oil within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
10. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment.
11. To implement section 311(b)(3), EPA has promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. That regulation provides that such quantities of oil include discharges that either violate applicable water quality standards, or cause a film or sheen upon or

discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

12. On September 20, 2002, at approximately 10:10 pm, Cenex discovered a leak from an 8-inch pipeline adjacent to the Cenex Terminal in the vicinity of Glendive, Montana, that occurred at approximately 8:00 pm on September 20, 2002.

13. The leak resulted in the discharge of approximately 997 barrels (41,874 gallons) of unleaded gasoline into Seven Mile Creek and a slough of the Yellowstone River.

14. The Yellowstone River, its slough and Seven Mile Creek are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

15. Oil and a sheen remained on the affected waters and adjoining shorelines as of November 1, 2002.

16. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

17. Respondent’s discharge of approximately 997 barrels (41,874 gallons) of unleaded gasoline from a pipeline into or upon navigable waters of the U.S. or an adjoining shoreline on or about September 20, 2002, constitutes a violation of section 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i), and is subject to a maximum penalty of \$11,000 per day of violation for a minimum of days.

18. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, the amount of a class II civil penalty under subparagraph (A) may not exceed \$11,000 per day during which the violation continues, up to a maximum total of \$137,500 for all violations.

### **BACKGROUND**

19. Prior to executing this Consent Agreement, Respondent demonstrated to EPA that it is now in compliance with each of the relevant provisions of section 311 of the Act, 33 U.S.C. § 1321.

20. Respondent admits the jurisdictional allegations set forth in this Consent Agreement.

21. Respondent neither admits nor denies the factual allegations set forth in this Consent Agreement.

22. Respondent waives its right to contest any issue of law or fact set forth in this Agreement and knowingly agrees to waive its right to a hearing on this matter under section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal this matter under section 311(b)(6)(G)(ii), 33 U.S.C. § 1321(b)(6)(G)(ii).

23. Pursuant to section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), including but not limited to the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, any other factors as justice may require, and Respondent's agreement to perform the supplemental environmental project ("SEP") described herein, EPA has determined that an

appropriate civil penalty to settle this action is in the amount of \$68,500.

### **TERMS OF SETTLEMENT**

#### **Civil Penalty**

24. Respondent consents to the issuance of the Consent Agreement and for the purposes of settlement to the payment of the above-cited civil penalty.

25. Respondent consents and agrees that not more than thirty (30) days after Respondent's receipt of a signed final order in this matter, Respondent shall pay the civil penalty by remitting a corporate, cashier's or certified check, payable to the order of the "Oil Spill Liability Trust Fund,"<sup>1</sup> in the amount of Sixty Eight Thousand Five Hundred Dollars (\$68,500) to:

Jane Nakad  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

The check shall reference the Respondent's name and address, and the EPA docket number of this action.

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<sup>1</sup> Pursuant to section 311(s) of the CWA, 33 U.S.C. § 1321(s), any amounts received by the United States for actions under section 311 shall be deposited in the "Oil Spill Liability Trust Fund," established under 26 U.S.C. § 9509 to address discharges and substantial threats of discharges of oil.

26. Respondent agrees to mail a copy of the check simultaneously to the following:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

Amy Swanson, Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, CO 80202-2466

27. Respondent agrees and consents that if it fails to pay the penalty amount on the due date set forth in paragraph 25 above, EPA may demand that Respondent pay the full penalty amount of \$137,500 in cash in full satisfaction of this matter. Alternatively, EPA may demand payment of the entire cash settlement amount of \$68,500, plus interest and a late charge of fifteen dollars (\$15.00) after the first 30-day period and for each subsequent 30-day period, or any portion thereof, that the payment is overdue until payment is made, in addition to demanding compliance with all other terms of this Consent Agreement, including but not limited to, performance of the SEP identified in paragraph 29.

28. The penalty specified in paragraph 25 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

#### Supplemental Environmental Projects

29. SEP Description

- a. Respondent shall undertake the performance of the oil spill containment SEP described in the proposed SEP letter from David Veeder to Amy Swanson, dated September 16, 2003 (“SEP Proposal”) (hereby referenced and incorporated herein as Exhibit A). The oil spill containment

equipment shall be stored at the Dawson County Public Works yard as described in the undated letter from the Dawson County LEPC to Cenex representative Jeff Casey (hereby referenced and incorporated herein as Exhibit B.)

- b. Respondent shall complete the SEP in accordance with the terms and conditions outlined in the SEP Proposal no later than six (6) months from the date of the final order.

30. The total expenditure for the SEP shall be not less than \$86,250 ("SEP amount"), in accordance with the specifications set forth in the SEP Proposal.

31. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

32. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the CWA."

33. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following the SEP's completion.

- a. The SEP Completion Report shall contain the following information:



- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and
- (iv) Certification that the SEP was fully implemented pursuant to the provisions of this Consent Agreement.

b. Respondent agrees that failure to submit the SEP Completion Report may be deemed a violation of this Consent Agreement and result in the assessment of stipulated penalties agreed to below.

c. Respondent shall submit all notices and reports required by this Consent Agreement by first class mail to:

Jane Nakad  
U.S. EPA Region 8 (8ENF-UFO)  
999 19th Street, Suite 300  
Denver, Colorado 80202-2466

#### Stipulated Penalties

34. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 29 above and/or to the extent that the actual SEP expenditure does not equal or exceed the total SEP expenditure described in paragraph 30 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) immediately below, Respondent

agrees to pay the SEP amount, less the EPA-approved amount already expended, and pay a stipulated penalty in the amount of \$5,000 to the U.S. Treasury within thirty (30) days of written demand by EPA if the SEP is not satisfactorily completed by the SEP deadline of six months from the date of the final order.

b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

c. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

d. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the projects, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

e. For failure to submit the SEP Completion Report required by paragraph 33 above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the SEP Completion Report was originally due until the date that it is submitted.

35. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

36. Respondent shall pay stipulated penalties within thirty (30) days of receipt of

written demand by EPA for such penalties. Method of payment, including applicable interest and/or late fees, shall be in accordance with the provisions of paragraph 27 above.

### **GENERAL PROVISIONS**

37. This Consent Agreement shall contain all terms of the settlement agreed to by the parties.

38. Failure by the Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the U.S. Department of Justice for enforcement of the agreement and for such other relief as deemed appropriate

39. This Consent Agreement shall apply to and be binding upon the Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.

40. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

41. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with the CWA and its implementing regulations.

42. Respondent's undersigned representative certifies that he or she is fully authorized to enter into and bind the Respondent to the terms and conditions of this Consent Agreement.

43. The parties agree to bear their own costs and attorneys fees in connection with this

matter.

44. The parties agree to forward the executed Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final consent order.

45. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall constitute a complete and full settlement of the violations alleged herein.

**SO CONSENTED AND AGREED TO:**

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

Date: 03/10/04

By: Eddie A. Sierra for/  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**CENEX PIPELINE, LLC,**  
Respondent.

Date: 2/24/04

By: SIGNED  
John E. Traeger  
President

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **CENEX PIPELINE, LLC. And CENEX REFINED PRODUCTS PIPELINE SPILL, DOCKET NO.: CWA-08-2004-0033** was filed with the Regional Hearing Clerk on March 11, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on March 11, 2004, to:

John E. Traeger, President  
Cenex Pipeline, LLC  
Cenex Pipelines and Terminals  
803 Highway 212 South  
P. O. Box 909  
Laurel, MT 59044

and

Commander  
Finance Center (OGR)  
U.S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

March 11, 2004

**SIGNED**\_\_\_\_\_

Tina Artemis  
Regional Hearing Clerk

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MARCH 11, 2004.**